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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,615	10/13/2000	Richard A. Esser	04350.0012-00000	8050

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 04/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/689,615

Applicant(s)

ESSER, RICHARD A.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 13 and 20-28 is/are pending in the application.
- 4a) Of the above claim(s) 22-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 13, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 22-28 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

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keep Newly submitted claims 22-28 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 22-28 are directed to a method of use.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 22-28 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Figure 1 depicts the containment device in a closed compact (collapsed) configuration and Fig. 2 depicts the containment device in an open erect configuration.

omit The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

omit Claims 1-9, 13 and 21 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. When the device collapses, that is when it moves from the open configuration shown in Fig. 2 to the closed compact (collapsed) configuration shown in Fig. 1, it doesn't collapse in height but becomes more upright or lengthens.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zeigler ('946) (Zeigler).

Zeigler discloses a portable shelter assembly as shown in Fig. 1A-1D, the assembly has a collapsible framework as shown in erected and open formation in Fig. 2B and 2C and a collapsed formation as shown in Fig. 2A. Zeigler discloses the invention except for the device forms a canopy with an open bottom rather than a containment device which is open at the top. It would have been obvious to invert (turn up-side-down) the portable shelter assembly in order to form a containment device which can be rapidly deployed so that a container could be provided to hold items. The assembly includes rods (struts) and hubs and a canopy attached to the hubs, the rods are joined by a scissors connection intermediate their ends, the rods are connected at their ends to the hubs, each end portion pivoting along separate axes of revolution in relation to the hub, each end portion being rotatable about its axis of revolution from the closed compact configuration, where all the rods are parallel, to an erect open configuration, the containment device articulating about three axes, whereby the containment device collapses between the compact and open configurations in height, length and width. The hubs positioned proximate the top of the collapsed configuration descend downwardly towards the bottom portion of the containment device when converting from the collapsed configuration to the erect configuration.

Claims 1-9, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esser et al. (Esser).

Esser discloses a quick erect shelter apparatus as shown in Fig. 1, the assembly has a collapsible framework as shown in erected and open formation in Fig. 2a and 8a. Esser discloses the invention except for the device forms a canopy with an open bottom rather than a

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containment device which is open at the top. It would have been obvious to invert (turn up-side-down) the quick erect shelter apparatus in order to form a containment device which can be rapidly deployed so that a container could be provided to hold items. The assembly includes rods and hubs and a canopy attached to the hubs, the rods are joined by a scissors connection intermediate their ends, the rods are connected at their ends to the hubs, each end portion pivoting along separate axes of revolution in relation to the hub, each end portion being rotatable about its axis of revolution from the closed compact configuration, where all the rods are parallel, to an erect open configuration, the containment device articulating about three axes, whereby the containment device collapses between the compact and open configurations in height, length and width. The hubs positioned proximate the top of the collapsed configuration descend downwardly towards the bottom portion of the containment device when converting from the collapsed configuration to the erect configuration.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zeigler in view of Lobbert.

Zeigler discloses the invention except for the liner positioned in the receptacle adjacent the canopy. Lobbert teaches a device for collecting waste wherein a container (7) on the interior of a device is lined by a removable liner (18). It would have been obvious to add a liner adjacent to the interior of the canopy in order to more easily remove waste from a device which has a part for receiving waste products which is more permanently connected than a removable liner laid upon the device. The removability is motivated by the convenience in rapidly removing the liner rather than needing to disconnect the canopy from each of the hubs and by constructing a liner of an easily cleanable plastic material which will reduce the accumulation of germs and disease

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associated with hazardous materials because the liner is the part exposed to contamination not the canopy.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Esser in view of Lobbert.

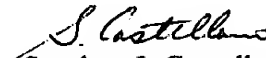
Esser discloses the invention except for the liner positioned in the receptacle adjacent the canopy. Lobbert teaches a device for collecting waste wherein a container (7) on the interior of a device is lined by a removable liner (18). It would have been obvious to add a liner adjacent to the interior of the canopy in order to more easily remove waste from a device which has a part for receiving waste products which is more permanently connected than a removable liner laid upon the device. The removability is motivated by the convenience in rapidly removing the liner rather than needing to disconnect the canopy from each of the hubs and by constructing a liner of an easily cleanable plastic material which will reduce the accumulation of germs and disease associated with hazardous materials because the liner is the part exposed to contamination not the canopy.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
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sjc
April 9, 2002